

**VOLUNTARY CLEANUP CONTRACT  
09-5806-NRP**

**IN THE MATTER OF  
CHICORA TANK FARM, CHARLESTON COUNTY  
and  
CITY OF NORTH CHARLESTON**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and the City of North Charleston, with respect to the Property located between Carner and Chicora Avenues in North Charleston, South Carolina. The Property includes approximately 24 acres identified by Tax Map Serial Number 469-15-00-144 and is more particularly described in Appendix A, attached hereto. In entering this Contract, the Department relies on the representations of the "Information and Certification" of July 29, 2008 by the City of North Charleston, which is incorporated into this Contract and attached as Appendix B.

**AUTHORITY**

This contract is entered pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710-760, as amended on June 11, 2008; the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq., and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

**DEFINITIONS**

1. Unless otherwise expressly provided in this Contract, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710-760, as amended on June 11, 2008, and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq., the S.C. Pollution Control Act, S.C. Code Ann. § 48-1-10, et. seq., the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et. seq., or the Comprehensive Environmental Response, Compensation and Liability Act

(CERCLA), 42 U.S.C. §§ 9601, et seq.

- A. "North Charleston" means City of North Charleston.
- B. "Beneficiaries" means North Charleston's Non-Responsible Party lenders, parents, managers, members, employees, subsidiaries, assigns and successors, including new purchasers, lessees, heirs, devisees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any contamination including pollutants or contaminants, petroleum or petroleum products, or hazardous substances present on, or under, the Site as of the execution date of this Contract.
- G. "Property" means the real property as described in Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of North Charleston. The Chicora Tank Farm Property is bounded generally by Carner Avenue to the west, Chicora Avenue to the east, Orvid Street to the north, and Clements Avenue and Burton Lane to the south.
- H. "Receptor" means an individual that is presently or potentially exposed to

contamination

- I. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause contamination upon release to the environment.
- J. "Waste Materials" means any contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

## FINDINGS

- 2. Based on the information known by the Department, the following are asserted for this Contract:

- A. Owners and Operators: The historical owners and operators of the Property are as follows:

United States Navy

1941 to 2004

Cross Atlantic, LLC

2004 to present

- B. Property and Surrounding Areas: The subject Property, known as the Chicora Tank Farm, was constructed by the U.S. Navy in 1943. Six tanks, constructed in the "cut and cover" fashion (majority of the tank constructed below grade with the remainder of the tank covered with soil giving the appearance of small hills), were used for bulk storage of diesel fuel and waste oil. The diesel fuel and the waste oil were transferred to/from the Charleston Naval Base, which is located approximately 1500 feet east of the Property, via underground transfer lines.

According to the Finding of Suitability to Transfer (FOST) prepared by the Navy in 2004, the Property was used for residential development prior to the acquisition of the Property by the Navy.

The six storage tanks have been emptied, cleaned, and were partially demolished in the late 1990's; however, three concrete block structures, a retention pond, the underground transfer lines, and the stormwater and fuel spill piping and sumps remain on the Property. Additionally, a 12,000 gallon underground storage tank ("UST") was removed and disposed of off-site. During the removal of this UST, soil contamination was discovered, which was also removed and disposed of off-site.

According to the FOST, the Navy entered into a Memorandum of Agreement with the Department, which requires the Navy to continue corrective action to address the existing petroleum groundwater contamination until the concentrations are at or below the appropriate regulatory levels. Corrective action oversight is now provided by the Division of Waste Management of the Bureau of Land and Waste Management.

- C. Investigations / Reports; The US Navy is currently implementing a groundwater monitoring program for the Property under the South Carolina Pollution Control Act. The Navy currently samples the existing wells on a semi-annual basis, with the most recent report dated September 2008. Napthalene was detected above the Risk-Based Screening Level (RBSL) of 25 part-per-billion (ppb) in MW-34R. Other petroleum related contaminants were detected in several wells; however, concentrations were below their respective RBSLs.

The Navy implemented a soil removal action on November 16, 2005 near MW-29 and MW-34. The excavations were approximately 8 feet by 30 feet by 8 feet deep. The soil was screened with an organic vapor analyzer resulting in the disposal of approximately 40 tons of soil. However, to date the Department has not agreed that

all contamination has been removed as a result of this excavation.

- D. Party Identification: North Charleston is a political subdivision of the State of South Carolina with its principal place of business located at 4900 Lacross Road, North Charleston, South Carolina 29406. North Charleston affirms that it has the financial resources to conduct the response action pursuant to this Contract.
- E. Proposed Redevelopment: North Charleston will acquire the Property and intends to redevelop the Property for use as a park with picnic shelters, practice fields for various sports, green spaces, and on-site parking. Single-family housing is also proposed for a portion of the Property.

#### BONA FIDE PROSPECTIVE PURCHASER STATUS

3. North Charleston certifies that it is a Non-Responsible Party at the Site and is eligible to be a Bona Fide Prospective Purchaser for the Property.

#### RESPONSE ACTION

4. North Charleston agrees to conduct the response actions specified in the subparagraphs below. An initial Work Plan shall be submitted by North Charleston, or its designee, within thirty days of the execution date of this Contract, or later date if approved by the Department's project manager, setting forth methods and schedules for response actions detailed herein. North Charleston acknowledges that the response actions may find distributions of existing contamination requiring additional assessment or corrective actions on the Property that cannot be anticipated with this Contract. North Charleston agrees to perform the additional response actions consistent with the intended uses of the Property under the purview of this Contract; however, North Charleston may seek an amendment of this Contract to clarify its further responsibilities. North Charleston shall perform all response actions, whether of North Charleston's choosing or expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes and permitting requirements (e.g., stormwater management and waste disposal regulations). North Charleston shall identify and obtain the applicable permits before beginning any action.
- 2). The Work Plan and all associated reports shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 3). The Work Plan(s) shall provide sufficient information about the proposed sampling points, collection methods, analytical methods, and other pertinent details of the response actions.
  - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
  - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with the South Carolina Well Standards and Regulations-R.61-71. The Work Plan shall provide sufficient detail to support issuance of the well approvals.
  - c). The laboratory analyses shall be as required in the media-specific subparagraphs below, but may include: 1) the full EPA-TAL (Target Analyte List); 2) the full EPA-TCL (Target Compound List); 3) the TAL-Metals (EPA-TAL without Cyanide); 4) SVOCs (EPA-TCL Semi-Volatile Organics); 5) VOCs (EPA-TCL Volatile Organic Compounds); or, 6) Pesticides (the EPA-TCL Pesticides).
  - d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL (Soil Screening Level) for a compound shall be the "MCL-Based SSL" if listed.

- 4). The Work Plan shall include the names, addresses, and telephone numbers of North Charleston's consulting firm(s), analytical laboratories, and North Charleston's contact person for matters relating to this Contract.
  - a). The analytical laboratory shall possess applicable Certification, as per South Carolina R.61-81, for the test methods to be used during this assessment.
  - b). North Charleston shall notify the Department in writing of changes in the contractor or laboratory.
- 5). The Department will notify North Charleston in writing of approvals or deficiencies in the Work Plan.
- 6). North Charleston, or its designee, shall respond in writing within thirty days to the Department's comments with regards to deficiencies.
- 7). North Charleston shall implement the Work Plan upon written approval from the Department.
- 8). North Charleston shall inform the Department at least five (5) working days in advance of all field activities, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 9). North Charleston shall preserve items that may: 1) provide evidence of a Potentially Responsible Party's involvement at the site; 2) lead to the discovery of other areas of contamination; or 3) contain environmental information. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. North Charleston shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

**B. Assess Waste Materials and Segregated Sources:**

- 1). North Charleston shall assess Waste Materials and Segregated Sources upon their discovery on the Property at any time during assessment, corrective action, or development activities.

- 2). North Charleston's assessment shall include characterization of the contaminant concentrations, and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable.
- 3). North Charleston shall expeditiously stabilize or remove from the Property any Segregated Source that has not yet released all contents to the environment upon discovery.
- 4). North Charleston shall notify the Department if a release of contamination occurs as a result of its assessment, stabilization or removal actions. North Charleston shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

C. Conduct a well survey:

- 1). North Charleston shall map all public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). North Charleston shall report sufficient information to the Department to allow the Department to secure permission to sample the wells. At a minimum, this information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to North Charleston, of the well owner or occupant of the residence served by the well.

D. Assess soil quality across the Property:

- 1). North Charleston shall collect two surface and two subsurface soil samples along the perimeter of each of six locations containing the buried remnants of the tanks identified as 3906 K through 3906 P for a total of twenty-four samples. Surface soil sample locations shall be biased towards areas likely impacted by historical operations and subsurface soil sample locations shall be biased towards areas of likely release, such as piping junctions. Each soil sample shall be analyzed for TAL-Metals, VOCs and SVOCs.



- 2). One surface, and corresponding subsurface soil sample shall be collected from each area devoid of vegetation. Each sample shall be analyzed for the full suite of EPA TAL/TCL parameters.
- 3). Three composite soil samples shall be collected from the soil stock piles present on the Property. Each sample shall be analyzed for VOCs, SVOCs, Pesticides, and TAL-Metals.
- 4). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL

E. Assess groundwater quality:

- 1). North Charleston shall determine groundwater quality on the Property. Assessment shall include samples from a minimum of six temporary pre-packed screen Direct Push Technology (DPT) monitoring wells to be installed hydraulically downgradient of each location containing buried tank remnants.
- 2). Samples from two of the wells shall be analyzed for the full suite of EPA TAL/TCL parameters. Samples from the remaining wells shall be analyzed for TAL- Metals, VOCs and SVOCs.
- 3). Groundwater quality results shall be compared to standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, and to the Regional Screening Tables values for "Tapwater", if not specified in R.61-58.

F. Assess Sediment and Surface water quality:

- 1). North Charleston shall collect and analyze two sediment and two surface water samples from the former pond area.
- 2). The sediment samples shall be analyzed for TAL-Metals, SVOCs, and PCBs. The surface water samples shall be analyzed for the TAL-Metals, VOCs and SVOCs.
- 3). Surface water quality results shall be compared to the values in the SC Water Classifications and Standards, R.61-68, based on consumption of either "water and organisms" or "organisms only" as applicable for the water body. Sediment

samples shall be compared to the Ecological Screening Values in EPA Region 4 Ecological Risk Assessment – Supplement to RAGS.

G. Evaluate and control potential impacts to indoor air:

- 1). North Charleston shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine “Significant concentrations” based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting residential or commercial exposures consistent with the building construction and its intended use on the Property.
- 2). This evaluation shall consist of collection and analysis of a representative number of soil gas samples from the proposed footprint of buildings to be constructed on the site. Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a  $10^{-6}$  risk for shallow gas samples (using an attenuation factor appropriate for the depth of the samples). The applicable screening concentrations shall be based upon the EPA OSWER “Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils” or supplemental EPA guidance.
- 3). The Department may allow North Charleston to implement Vapor Intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department’s sole discretion, offer a similar degree of data usability.
- 4). North Charleston shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the predicted indoor air concentration exceeds a  $10^{-6}$  risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs) or residential exposure, as appropriate. The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the

building do not result from the subsurface conditions.

H. North Charleston shall take reasonable measures to limit or prevent human exposure to existing contamination on the Property:

- a). Measures shall be required for Waste Materials and contaminated media with concentrations in excess of appropriate human-health and ecological risk-based exposure standards via plausibly complete routes of exposure. The measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the contamination.
  - i. The measures shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
  - ii. North Charleston shall provide appropriate documentation to demonstrate satisfactory completion of the control measures for Department review and approval prior to obtaining a Certificate of Completion.
- b). North Charleston shall remove from the Property any Segregated Sources of contamination that have not yet released all contents to the environment.
  - i. The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
  - ii. North Charleston shall document the characterization and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.

I. Monitor and/or abandon the monitoring wells:

- 1). North Charleston shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors. The Department will determine the frequency and duration of the monitoring

program on a case-specific basis.

- 2). North Charleston shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

J. Complete required activities in the event of a Responsible Party default:

- 1). Ongoing remedial activity by the US Navy may substantially satisfy the requirements in subparagraphs 4.D, 4.E, 4.F, and 4.I above. Therefore, it is agreed that response action completed by the US Navy that meet the conditions of this Contract shall be deemed to satisfy the requirements on North Charleston. The Department shall have sole discretion in determining the adequacy of the US Navy response action towards completing the activities required by this Contract.
- 2). The Department will provide written notification to North Charleston if more than 180 consecutive days elapse without substantial progress, or the Department otherwise determines the US Navy activities are inadequate.
- 3). North Charleston shall respond in writing within thirty days to the Department's notification with a workplan for completing the unfulfilled requirements of this Contract.

HEALTH AND SAFETY PLAN

5. North Charleston shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. North Charleston agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by North Charleston.

## PUBLIC PARTICIPATION

6. North Charleston and the Department will foster public participation to implement this Contract as follows:

A. The Department will seek public comment and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. statutes upon signature of this Contract by North Charleston.

B. North Charleston shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected within one day of the Department's public announcement about the Contract in a newspaper of general circulation in the community.

- 1). The sign will state "Voluntary Cleanup Project by City of North Charleston under Voluntary Cleanup Contract 09-5806-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of North Charleston. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.
- 3). North Charleston shall submit photographs of the sign and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). North Charleston agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). North Charleston shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the contract period until a Certificate of Completion is issued on the Property.

- 6). The sign(s) may be removed to accommodate building or grading activities; however, North Charleston shall restore the sign within two days to its original location, or other publicly accessible location upon notice to the Department.

### PROGRESS UPDATES

7. North Charleston shall submit periodic written updates to the Department's project manager until such time as all activities are complete pursuant to this Contract. The first update shall be due within 90 days of the execution date of this Contract and semi-annually thereafter.
  - A. The updates may be in summary letter format, but should include information about:
    - 1). The actions taken under this Contract during the previous reporting period;
    - 2). Actions scheduled to be taken in the next reporting period;
    - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
    - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
  - B. The Department's project manager may allow an extended schedule between updates based on site-specific conditions.

### SCHEDULE

8. North Charleston shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances dictate a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize the contamination or prevent unacceptable exposures. North Charleston shall implement the interim measures in accordance with a Department-approved plan.

## DECLARATION OF COVENANTS AND RESTRICTIONS

9. North Charleston or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Covenant) for the Property if contamination exceeds residential standards after completing the response actions pursuant to this Contract. The recorded Covenant shall be incorporated into this contract as an Appendix and shall be implemented as follows:
  - A. The Department shall prepare and sign the Covenant prior to providing it to North Charleston. An authorized representative of North Charleston or its Beneficiaries shall sign the Covenant within thirty (30) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
  - B. North Charleston or its Beneficiaries shall file the executed Covenant with the Registrar of Deeds for the county where the Property is located.
  - C. North Charleston or its Beneficiaries shall provide a copy of the recorded Covenant to the Department within sixty days of the Department's execution. The copy shall show the date and Book and Page number where the Covenant has been recorded.
  - D. In the event that contamination exceeds residential standards on a portion of the Property, North Charleston or its Beneficiaries may create a new parcel that will be subject to the Covenant.
  - E. The Covenant shall be recorded on the master deed of any residential development planned for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Covenant.
  - F. The Covenant shall reserve a right of entry and inspection for North Charleston or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.

1). North Charleston or its Beneficiaries shall take reasonable steps to ensure that the restrictions established by the Covenant remain on any subdivided property.

2). North Charleston or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Covenant regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.

G. North Charleston or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Covenant to the Department. The report shall be submitted by May 31<sup>st</sup> in a manner and form prescribed by the Department.

H. The Department may amend the Covenant in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Site change; however, said amendment shall not be applied retroactively unless expressly provided for in the enabling legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment shall be duly executed and recorded with the county using procedures similar to those detailed above.

#### NOTIFICATION

10. All correspondence required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the contract. Notices by electronic mail or facsimile shall be acceptable if



acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of correspondence shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail; 2) Certified or Registered Mail; 3) Commercial delivery service company; or, 4) hand delivery to the other party.

- A. All correspondence to the Department including two hardcopies of all Work Plans and reports, and one hardcopy of the Health and Safety Plan should be submitted to:

Jerry Stamps  
Bureau of Land and Waste Management  
2600 Bull Street  
Columbia, South Carolina 29201

- B. North Charleston's designated contact person as of the effective date of this contract shall be:

Ray Anderson  
City of North Charleston  
P.O. Box 190016  
North Charleston, South Carolina 29419-9016

#### FINANCIAL REIMBURSEMENT

11. North Charleston or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. statutes. The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereof, and may include costs incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to North Charleston on a quarterly basis. [In recognition of North

Charleston's non-profit status, the Department may waive reimbursement of oversight costs, exclusive of the cost incurred for public participation. The Department reserves the right to re-instate oversight billing upon thirty-day notice to North Charleston; however, said billing shall not include any costs incurred by the Department prior to receipt of the notice. All costs are payable within thirty days of the Department's invoice submitted to:

Ray Anderson  
City of North Charleston  
P.O. Box 190016  
North Charleston, South Carolina 29419-9016

#### ACCESS TO THE PROPERTY

12. North Charleston agrees that the Department will not be denied access to the Property during normal business hour or at any time work under this Contract is being performed for during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

#### CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion will be issued on the Property as follows:
  - A. North Charleston shall request a Certificate of Completion after the response actions are completed and any required Covenants are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.

- B. The Department will issue the Certificate of Completion with its covenant not to sue upon determining that North Charleston has successfully and completely complied with the Contract.
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions are complete but all activities on the Property cannot be completed due to site-specific circumstances.
  - 1). A Provisional Certificate of Completion will include specific performance standards that North Charleston or its Beneficiaries shall continue to meet.
  - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if North Charleston or its Beneficiaries do not satisfactorily complete the requirements of the Contract.

#### ECONOMIC BENEFITS REPORTING

- 14. North Charleston or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two years after the execution date of this Contract, and annually until two years after redevelopment of the Property is complete. North Charleston shall summarize the new operations at the Property, the number of jobs created, the amount of increase to the tax base, and the total amount invested in the site for property acquisition and capital improvements.

#### TRANSFER OF CONTRACT

- 15. The terms and conditions of this Contract apply to and inure to the benefit of the Department, North Charleston, and its Beneficiaries. The following stipulations apply to ensure the transition of all responsibilities and benefits to successive Beneficiaries for any portion of the Property:

- A. North Charleston or its Beneficiaries shall provide a copy of this Contract and

applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.

- B. North Charleston and its Beneficiaries shall not allow residential occupancy on any portion of the Property prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property.
- C. If the Certificate of Completion has not been issued, North Charleston or its Beneficiaries shall seek approval from the Department prior to assigning or transferring the protections and obligations of this Contract to a new individual or entity. The protections shall not inure to an individual or entity without the Department's approval. The Department shall not unreasonably withhold its approval upon receipt of documentation from the new individual or entity showing it:
  - 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
  - 2). Has sufficient resources to complete the activities of this Contract;
  - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
  - 4). Will assume the protections and all obligations of this Contract and,
  - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.
- D. If the Certificate of Completion has been issued and the portion of the Property is subject to a Covenant or other ongoing obligation pursuant to this Contract, North Charleston or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.
  - 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract, and that it will assume the protections and ongoing obligations of this Contract.

2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual residential use provided the Covenant is recorded on the master deed for the residential development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

E. If a Certificate of Completion has been issued and the Property is not subject to a Covenant or other continued obligation pursuant to this Contract, no notification is required.

### CONTRACT TERMINATION

16. North Charleston, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:

A. The Department may terminate this Contract only for cause and shall provide opportunity for North Charleston or its Beneficiaries to correct causes of termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms of this Contract;
- 2). Change in North Charleston's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure of North Charleston or its Beneficiaries to implement appropriate response actions for additional contamination or releases caused by North Charleston or its Beneficiaries, or
- 5). Providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure by North Charleston or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at

the Property pursuant to this contract; or,

- 7). Failure by North Charleston or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of North Charleston's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.
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- B. Should North Charleston or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards created by North Charleston or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment that did not exist before the response actions identified in this Contract.
  - C. Termination of this Contract by any party does not end the obligations of North Charleston or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract prior to the date that any such termination takes effect. Payment for such costs shall become immediately due.
  - D. The protections provided to North Charleston or its Beneficiaries shall be null and void as to any party who willfully or intentionally participated in actions giving rise to termination of the Contract. This shall apply to that party's lenders, parents, subsidiaries, members, managers, employees, assigns, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party. The protections will continue for any other covered party who did not willfully or intentionally participate in the action giving rise to the termination.

#### ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. North Charleston and its Beneficiaries are entitled to the protections and benefits provided by S.C. statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
- 1). Protection from CERCLA contribution claims.
  - 2). Protection from third-party claims for equitable relief or damages relating to "Existing Contamination" at the Site.
  - 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.
- B. Effective on the date the Certificate of Completion is issued by the Department:
- 1). The Department's covenant not to sue North Charleston and its Beneficiaries for Existing Contamination except for releases and consequences caused by North Charleston or its Beneficiaries.
  - 2). Specific tax credits or additional benefits expressly contingent in S.C. statutes on issuance of the Certificate of Completion.
- C. These Protections and Benefits do not apply to any contamination, releases, and consequences caused by North Charleston and its Beneficiaries. The Department retains all rights under State and Federal laws to compel North Charleston and its Beneficiaries to perform or pay for response activity for contamination, releases and consequences created by North Charleston or its Beneficiaries.

#### RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than North Charleston and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than North Charleston and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

#### RESERVATION OF RIGHTS BY North Charleston

19. North Charleston retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. North Charleston and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for contamination, releases, and consequences they cause or contribute to the Site. However, North Charleston and its Beneficiaries agree to undertake the requirements of this Contract.

#### BURDEN OF PROOF

20. North Charleston and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered contamination is not attributable to North Charleston or its Beneficiaries. North Charleston and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered contamination. For purposes of this clause, newly discovered contamination means finding types of contamination not previously identified at the Site or substantially higher concentrations of Existing Contamination.

#### LIMITATION OF CLAIMS BY North Charleston AND ITS BENEFICIARIES

21. In consideration of the protections from the Department, North Charleston and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions, or the Department's willful violation of the terms of this agreement.



SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
CONTROL**


BY: \_\_\_\_\_  
Daphne G. Neel, Chief  
Bureau of Land and Waste Management

DATE: \_\_\_\_\_

\_\_\_\_\_  
Approved by Office of General Counsel

DATE: \_\_\_\_\_

**City of North Charleston**

BY:   
R. Keith Summey, Mayor  
Printed Name and Title

DATE: 11.13.09